

IN THE  
**SUPREME COURT OF THE UNITED STATES** JR., CLERK

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October Term, 1978

No. 77-1834

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JOHN H. LANG, *Appellant*

*v.*

CITY OF PHILADELPHIA

AND

CHARLES E. DORFMAN

AND

NICHOLAS D'ALESSANDRO

AND

DAVID A. KRAFTSOW

AND

ANDREW G. FREEMAN

AND

KENNETH L. MOORE

AND

STANLEY J. BERNSTEIN

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**PETITION FOR REHEARING**

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On Appeal from  
the Commonwealth Court of Pennsylvania.

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KENNETH E. AARON

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**PETITION FOR REHEARING**

The Petitioner herein respectfully moves this Court for an Order (1) vacating its dismissal of his Appeal for want of a substantial Federal question entered on October 2, 1978, and (2) granting the Petition. As grounds for this Petition, he states the following:

**I. The Effect of the Philadelphia Wage Tax is to Impose a Tax Only on Those Wages Earned in the City of Philadelphia When Earned by a Nonresident of the City in Violation of the Equal Protection Clause of the Fourteenth Amendment and the Privileges and Immunities Clause of the United States Constitution.**

The Philadelphia Wage Tax Ordinance is devised so as only to impose a tax on wages earned in the City of Philadelphia when they are earned by a nonresident of the City of Philadelphia. The residents themselves pay no additional taxation on their wages if they are earned within the City of Philadelphia. Such a taxing scheme operates to the disfavor of the nonresident and in favor of the resident. *Shaffer v. Carter*, 252 U.S. 37 (1920). A taxing scheme which violates the Equal Protection and Privileges and Immunities must be looked at with great scrutiny. *Austin v. New Hampshire*, 420 U.S. 656 (1975).

Under the Philadelphia Wage Tax Ordinance, Philadelphia Code §19-1502(1)(a&b) [Appendix E, Jurisdictional Statement], there are two different taxes imposed. The first tax is imposed upon the residents of the City of Philadelphia on all of their earned income whether or not the underlying activity is done within the City of Philadelphia. Thus the resident who works outside of the City pays the same exact tax as the resident who works within the City. Basically, the resident who works within the City pays no share of his taxes for the privilege of working within the City. The second tax that is imposed is upon the earnings of nonresidents of the City. This tax is imposed upon their wages earned in the City and is allegedly to pay for the nonresidents rateable share of the taxing burden.

In reviewing a taxing scheme on both residents and nonresidents to determine whether it violates the United States Constitution it is necessary to view it in its totality. Where a taxing scheme operates so that the nonresident

is taxed and the resident similarly situated does not pay an offsetting tax there is a violation of the Constitution. *Austin v. New Hampshire*, *supra*. A multiple taxing scheme cannot be used in such a manner to attempt by alchemy to achieve equality that does not actually exist.

When one reviews the entire taxing scheme of the City of Philadelphia it becomes readily apparent that there is an equality between the nonresident of the City working in the City and the resident working outside the City. It is equally as apparent that the resident who works within the City avoids having to pay a tax for his share of the tax burden for that privilege. The resident that works within the City pays no more than his counterpart resident working outside of the City. As a result, this taxing scheme operates to the advantage of the resident who works within the City and to the apportionate disadvantage of the nonresident who works within the City. In reality the resident working within the City must pay twice as much tax as the nonresident working within the City for equality to exist.

This taxing scheme is not one of a lack of precision in obtaining equality. To the contrary, it represents an intentional action to place an unfair distribution of the taxing burden upon the nonresident working within the City. *Travellers Insurance Co. v. Connecticut*, 185 U.S. 364 (1902).

It is respectfully submitted that the Philadelphia Wage Tax Ordinance violates the Equal Protection Clause of the Fourteenth Amendment and the Privileges and Immunities Clause of the United States Constitution in that it fails to provide "tax equality" between residents working in the City of Philadelphia and nonresidents working in the City of Philadelphia. There is a substantial federal question which effects many citizens throughout the country who are subjected to a similar unfair taxing scheme by avaricious municipalities seeking to fund their operations from non-

residents wages without a similar taxation on their own residents who work within the city.

This Constitutional question was appropriately raised in the Courts below although not mentioned in the decision of the Commonwealth Court [Appendix A]. However, the Common Pleas Court Judge's Opinion specifically reviewed this issue and found no equal protection or privilege and immunity violation. [Appendix B.]

**II. The Lack of a Definitive United States Supreme Court Decision Concerning the Effect and Interpretation of the Buck Act as it Relates to Exclusive Jurisdiction of Federal Enclaves Will Continue to Spur Federal Employee Dissatisfaction and Resentment Contrary to the Best Interests of the Federal Government.**

This Honorable Court has continually refused to make a definitive decision as to the effect ~~the~~ Buck Act [Appendix F] upon federal exclusive jurisdiction enclaves established under Article I, Section 8, Clause 17 of the United States Constitution. See, *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289 cert. denied 320 U.S. (1943). Because of Johnson Act, 28 U.S., §1341, there has been no federal court decisions interpreting this provision and as a result, the federal employees, including your Petitioner, have been left at the mercy of the taxing jurisdiction for their own selfserving and avaricious determinations. Your Petitioner, like the appellant in *Kiker*, has been denied an opportunity to present any factual proof of his position to the state court prior to that state court's legal determination.

The dissatisfaction of federal employees with the state court's decision concerning the Buck Act has continually manifested itself in court actions in various states and in Petitions for Certiorari to this Honorable Court. The present case in the form of an Appeal seeks review of a question which is substantial to federal employees. Such review, it is respectfully submitted, should be provided to put this

matter to a final federal determination. The failure of this Honorable Court to take further action will only spawn additional litigation over this question. It is therefore respectfully submitted that this Honorable Court should provide a rehearing of the questions presented in the Jurisdictional Statement in this Appeal so as to avoid additional multiplicity of law suits in numerous state courts and to resolve this question of burning importance to all federal employees working on federal enclaves.

**CONCLUSION**

For the reasons set forth above as well as those contained in the Jurisdictional Statement, the Petitioner prays this Court to grant review of the Order of Dismissal, vacate that Order, grant this Petition, and review the Judgments and Opinions below.

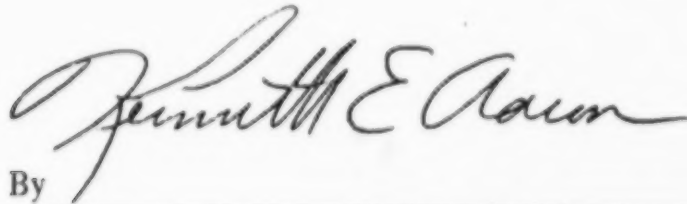
Respectfully submitted,



KENNETH E. AARON  
Counsel for Petitioner

## CERTIFICATE OF COUNSEL

As counsel for Petitioner, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay.



By

Kenneth E. Aaron  
Counsel for Petitioner

## CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 1978, three (3) copies of the Petition for Rehearing were personally served to Stewart M. Weintraub, Esquire, at his office at 1580 Municipal Services Building, Philadelphia, Pennsylvania, 19107, as counsel for the Appellees. I further certify that all parties required to be served have been served.



By:

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